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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/641,142	08/15/2003	Steven Shrager	P23568	8544
7055	7590	11/28/2005		
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER THALER, MICHAEL H	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/641,142

Applicant(s)

SHRAGA, STEVEN

Examiner

Michael Thaler

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 4-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/17/05.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 3731

Applicant's election with traverse of the species of figures 36-40 in the reply filed on April 4, 2005 is acknowledged. The traversal is on the ground(s) that there is no serious burden on the examiner to in examining all the claims. This is not found persuasive because there would be a serious burden on the examiner since the subject matter of the species of figures 41-42 is significantly different than the subject matter of the species of figures 36-40. The requirement is still deemed proper and is therefore made FINAL.

Claims 4-7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 4, 2005. Contrary to the remarks filed on April 4, 2005, claims 4-7 read on the species of figures 41-42 rather than the elected species of figures 36-40, as finally admitted by applicant in the remarks on pages 9-10 of the response filed Oct. 5, 2005. Claims 4-7 were initially examined on the merits in the Office Action mailed July 5, 2005 based on applicant's erroneous assertion (in the response filed April 4, 2005) that these claims were drawn to the elected species of figures 36-40. Since applicant now

Art Unit: 3731

admits that these claims are drawn to a different, non-elected species, they are withdrawn from further consideration.

Claims 1-3 and 8-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is confusing and inaccurate since it indicates, in line 13, that the second stop surface extends inwardly from the body. In fact, the second stop surface FSS is part of the body 1/2 since section 2 is part of the body 1/2 as indicated on page 15 line 10 of the specification, and since second stop surface FSS is on section 2 as indicated on page 15, lines 18-20.

Claims 1-3, 8-23, 27-31, 36-42 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schraga (6,156,051). Schraga, in figure 16, discloses body 20C, trigger 45, front cover (the assembly of members 20A and 50 which are secured together to form a single cover as indicated in col. 10, lines 18-26 and which is a "front" cover since this cover extends to the front of the device), holding member 30, main spring 40, first stop surface (the upper surface of flange 176 as seen in figure 16), second stop surface (the lower surface of member 174 as seen in figure 16) extending inwardly from the outer portion of the body

Art Unit: 3731

and arranged between the first stop surface and the skin engaging end, wherein at least partial rotation of the front cover 20A, 50 causes the skin engaging end (at the distal end of 50) to move axially relative to the second stop surface (due to the threaded connection at 170, 172 as indicated in col. 14, lines 21-24). Alternatively, it would have been obvious that members 20A and 50 form a "front" cover since this cover extends to the front of the device. As to claim 2, Schraga discloses back cap 20B. As to claim 8, Schraga discloses another spring 178. As to claim 12, note col. 9, lines 36-40 of Schraga. As to claim 13, Schraga discloses locking member 182. As to claim 18, Schraga discloses deflecting member 36.

Claims 24-26 and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schraga (6,156,051). As to claims 24-26, Schraga, in the embodiment of figure 16, fails to disclose indicia on at least one of the front cover and the body. However, Schraga, in the embodiment of figure 1, teaches that indicia should be placed on the threaded members in order to obtain the advantage easily determining the penetration depth of the lancet (col. 16, lines 46-59). It would have been obvious to include indicia on the threaded members 20A and 20C in the figure 16 embodiment so that this embodiment too would have this advantage. As to claim 32, Schraga fails to disclose

Art Unit: 3731

the body 20C as being a two-piece body. However, Schraga teaches that body 20 should be formed initially as a two piece body in order to obtain the advantage of facilitating its manufacture (col. 8, lines 29-31). It would have been obvious to form body 20C as a two-piece body so that it too would have this advantage.

Claims 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slama (4,469,110) in view of Schraga (6,156,051). Slama discloses body 2, trigger 5a, front cover 10, holding member 3, main spring 4, first stop surface (the outer surface of shaft 5), second stop surface 7 (col. 3, lines 34-38), wherein at least partial rotation of the front cover 10 causes the skin engaging end to move axially relative to the second stop surface (col. 3, lines 49-58). Slama fails to disclose the main spring 4 being disposed between the front and rear ends of the holding member 3. However, Schraga teaches that the holding member 30 should extend to the back end of the lancet device in order to enable it to engage a back cap 20B (figure 16) apparently in order to obtain the advantage of easily cocking the needle by pulling on back cap 20B (col. 14, lines 52-59). It would have been obvious to elongate the holding member 3 of Slama in the rearward direction to engage a similar back cap so that it too would have this advantage. With

Art Unit: 3731

this modification, the Slama main spring 4 would be disposed between the front and rear ends of the holding member 3, noting that the Schraga main spring 40 is so disposed relative to holding member 30.

Applicant's arguments filed Oct. 5, 2005 have been fully considered but they are not persuasive. As indicated in the Office Action mailed July 5, 2005, the second stop surface of Slama is considered to be surface 7, not "the one arranged on the rear end of the front cover 10" as alleged at the bottom of page 11 of the remarks. Note that Schraga, in figure 16, discloses the second stop surface extending inwardly from the body, as now claimed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will

Art Unit: 3731

expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

mht  
11/21/05



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731